

PROCEDURES FOR JUDGE PEPPER'S COURT

May 2006

I. Courtroom Decorum

- A. The Court prohibits the use of the communication functions of cell phones, smart phones or pagers in the courtroom. This prohibition applies to lawyers and parties. You must turn off the “telephone,” e-mail or instant messaging components of all cell phones, smart phones or pagers while you are in the courtroom. The Court reserves the right to take such devices from anyone who does not comply with this rule.
- B. The Court encourages parties and counsel to have discussions with each other in the hallway outside the courtroom, or in the adjoining witness rooms, rather than in the courtroom.
- C. The Court discourages cross-talk among lawyers during hearings. Counsel’s remarks are appropriately addressed to the Court. If lawyers or parties need time to discuss or negotiate an issue, they are encouraged to ask for a brief recess, rather than holding such discussions on the record.
- E. In all court appearances where evidence is presented—hearings and trials—the Court expects that counsel will have the following tasks completed *prior* to the hearing:
 - 1. Exhibits selected and reviewed with the relevant witness;
 - 2. Exhibits numbered (the moving party may use numbers 1-99, the objecting party 100-199, and the trustee 200-299);
 - 3. Copies made for other counsel; and
 - 4. A copy made for the Court.

Counsel are encouraged to consider the foundational requirements for all exhibits under the Federal Rules of Evidence.

II. Contact with Court Staff

- A. *Ex parte* contacts with Judge Pepper are not permitted. (An *ex parte* contact occurs when one party contacts the Judge about a pending matter without including all other interested parties.)
- B. If you need assistance with a procedural matter (getting a date for a hearing, re-scheduling a hearing, finding out if a document has been received), you may contact any of the members of the Court’s staff, and they will be happy to assist you. The staff members are:

Judicial Assistant Paula Macomber
Courtroom Deputy Kris Wrobel
Research Attorney/Law Clerk Deb Schneider

Any member of the staff may be reached by calling (414) 297-3291x 3211 between 8:30 a.m. and 5:00 p.m.

- C. The Court staff cannot provide legal advice. If you have questions about whether you should file something, what you should file, what your papers should say, or what the Court is likely to do in a particular situation, you should ask those questions of a legal advisor.
- D. The best way to raise an issue with the Court is to file a motion, rather than to write a letter. The Court discourages parties from writing letters to the Court. Instead, the Court encourages parties to file a motion, with the name of the matter and the case number at the top of the page, and to provide a copy of that motion to all interested parties. A motion does not need to be long or complicated; it can consist of one sheet of paper.

III. Chambers Hours; Emergencies

Our regular business hours are Monday through Friday, 8:30 a.m. to 5:00 p.m. We are closed on Saturdays, Sundays and federal holidays.

If you have an emergency which requires a hearing when the chambers is not open, and the matter cannot wait until the next business morning, please call (414) 297-4073. A supervisor from the clerk's office will respond to your call, and will attempt to help you. If you need an emergency hearing, the supervisor will contact one of the bankruptcy judges to make appropriate arrangements. You should be ready to explain to the supervisor why you feel your matter constitutes an emergency.

IV. Out-of-District Lawyers Wishing to Appear "Pro Hac Vice"

Attorneys appearing in bankruptcy court must comply with rules for admission to practice before the United States District Court for the Eastern District of Wisconsin, ***except that the bankruptcy court in its discretion, upon request from counsel and without application, fee, or motion of a member in good standing, may issue an order allowing appearance by an attorney who is not admitted to practice in this district for matters that are incidental and limited in duration.***

If an attorney from another district believes that his or her appearance relates to a matter that is "incidental" and "limited in duration," he or she may simply ask the Court for permission to be admitted *pro hac vice*. The Court will determine whether the appearance is one that warrants this type of admission.

Attorneys whose appearance relates to matters that are neither incidental nor limited in duration must follow the procedure used in the district court. That procedure is

related below. (For a full copy of the district court's local rules, log on to www.wied.uscourts.gov and click on the "Local Rules" link.)

An applicant must present to the district court clerk's office (*Clerk of Court, 517 East Wisconsin Avenue, Room 362, Milwaukee, WI 53202*) by mail or in person, the following three items:

1. **A certificate of good standing** from any United States court, the highest court of any state, or the District of Columbia, OR the affidavit or sworn statement of an attorney admitted to general practice in the Eastern District that the applicant is an attorney in good standing in one of the above courts;

2. **The following oath**, subscribed and sworn before a notary public or other person authorized to administer oaths:

I do solemnly swear that to the best of my knowledge and ability, I will support and defend the Constitution of the United States against all enemies, foreign and domestic, and that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will demean myself as an attorney and counselor of the United States District Court for the Eastern District of Wisconsin uprightly and according to law.

3. **A check or money order in the amount of \$160.00**, made payable to "Clerk of Court," for the admission fee.

Once the clerk's office has received these documents, the applicant will be admitted to practice in the Eastern District of Wisconsin, including in the bankruptcy courts.

Under some circumstances, an out-of-district attorney may be "ceremonially" admitted before a bankruptcy judge. In order for this to occur, an attorney already admitted and in good standing in the Eastern District of Wisconsin must move for the applicant's admission, and the applicant must pay the \$160 admission fee. The applicant should be prepared to provide some proof of good standing in another court.

V. Schedule for Chapter 13 Calendar

The Court hears all matters assigned to Chapter 13 Standing Trustee Thomas J. King on Tuesdays from 10:30 a.m. to 12:00 p.m. The Court hears all matters assigned to Chapter 13 Standing Trustee Mary B. Grossman from 2:30 p.m. to 4:00 p.m. on Tuesdays, from 10:30 a.m. to noon on the first Wednesday of each month, and from 9:00 a.m. to 10:30 a.m. on the second Wednesday of each month.

If it appears that any Chapter 13 matter involves contested issues or issues which require an evidentiary hearing, the Court will re-schedule those hearings for other dates and times. *If you plan to present evidence on a Chapter 13 matter, you are encouraged to state in your pleadings that you are requesting an evidentiary hearing.*

VI. Procedural Issues

A. Motion Practice

Parties are strongly encouraged to review the local rules for the Eastern District of Wisconsin bankruptcy courts. Local Rules 9013.2 through 9014.3 govern appropriate motion practice, and when considering motions, the Court will review whether the motion and the notice of the motion comply with the requirements of these rules.

In particular, the Court routinely looks at the following when considering motions:

- * whether notices of motion contain the appropriate information regarding the deadline for filing objections;
- * whether the parties affected by the requested action have been served;
- * whether the notice has been served sufficiently in advance of any hearing; and
- * whether an affidavit of no objection has been filed.

In addition, parties are encouraged to state clearly in the motion both the legal and factual bases for the relief they request. Simply requesting relief without explaining the specific statutory basis for the relief and the facts that make relief appropriate may result in delay in ruling on the motion, or may result in hearings being scheduled on motions where no objection has been filed.

Finally, if you plan to present evidence in support of your motion, or in opposition to another party's motion, you are strongly encouraged to request that the matter be set for an evidentiary hearing in your pleadings.

B. Reaffirmation Hearings

The old bankruptcy law (pre-October 17, 2005) required the Court to hold a hearing whenever a debtor who is not represented by a lawyer wanted to reaffirm certain debts. That remains the case under the new bankruptcy law. When the Court schedules a reaffirmation hearing for unrepresented debtors, creditors are welcome to appear, but are not required to do so unless specifically asked to appear by the Court.

If a debtor has a lawyer, but the lawyer does not feel comfortable signing the reaffirmation agreement, the Court will schedule a hearing—just as it would if the debtor did not have counsel. Counsel is free to attend the hearing or not, as he or she feels appropriate.

The new bankruptcy law (post-October 17, 2005) requires hearings in another instance. For cases filed after October 17, 2005, debtors must complete a new reaffirmation form. Part D of that form requires the debtor to list the income from her Schedule I and the expenses from her schedule J (minus the monthly payment on the reaffirmed debt), then subtract expenses from income. If the income minus expenses yields a number that is less than the scheduled payments on the reaffirmed debt, it is presumed

that the reaffirmation works an undue hardship on the debtor and that the Court should not allow it. If the Court feels that it should not allow the debtor to reaffirm, the Court **must** hold a hearing—even if the debtor was represented by counsel during the negotiation of the reaffirmation agreement.

In order to follow this new law, the Court carefully scrutinizes Part D of every reaffirmation agreement, and if it appears to the Court that the reaffirmation may leave the debtor with no money, or with a negative monthly balance, the Court will schedule a hearing. If debtors and their counsel wish to avoid having to appear at such hearings, they should complete Part D with care, making sure that (a) the income and expenses listed on Part D match with the income and expenses listed on Schedules I and J; (b) if a payment has been reduced as a result of the reaffirmation agreement, that is indicated somewhere on the form; and (c) if there are multiple debts to be reaffirmed, there is enough money left after subtracting expenses from income to cover the total amount of debt to be reaffirmed.

C. Motions to Extend Time for Filing Schedules or Other Documents

Section 521(i) of BAPCPA allows the Court to extend the 45-day period for filing the documents required by § 521(a)(1) “upon request of the debtor . . . if the court finds justification for extending the period for the filing.” **If you want the Court to grant permission to extend the 45-day period, you should state in the motion—in detail—the reason you wish the extension.** Simply stating that the debtor cannot get the documents by the deadline is not sufficient.

Fed. R. Bankr. P. 1007(a)(4) allows the Court to extend the time for filing creditor lists (“matrices”) “only on motion for cause shown and on notice to the United States trustee and to any . . . other party as the court may direct.” **If you want the Court to grant an extension of time to file the creditor list, or “matrix,” you need to give a detailed explanation of why you could not file the matrix in the 45 days and why you need more time, and you need to demonstrate that you gave notice of your motion to the U.S. trustee.**

Fed. Rule Bankr. P 1007(c) gives a debtor fifteen (15) days from the date of the petition to file schedules and statements if he or she filed their creditor list with their petition. The rule further states that a court may grant an extension of that 15-day period “only on motion for cause shown and on notice to the United States trustee and to any . . . other party as the court may direct.” **If you want the Court to grant an extension of time to file the schedules or statements, you need to give a detailed explanation of why you were unable to file the documents within the 15 days and why you need more time, and you need to demonstrate that you gave notice of your motion to the U.S. trustee.**

D. Orders Submitted for the Court to Sign

If you submit an order that you would like the Court to sign, you may want to be aware that the Court follows Local Rule 9014.5 in all cases in which an order is submitted by one party following a hearing. That rule states, “The court shall hold proposed orders for **five business days after the date of their receipt** for comments or objections to the form of the order, which shall be in writing.”

E. Motions to Employ Professionals

In cases where a trustee or other party wishes to employ a professional, the application to employ the professional should contain the following information:

- * whether the applicant is seeking appointment of general counsel under 11 U.S.C. § 327(a) or the employment of counsel under § 327(e) for a “specified special purpose;”
- * the scope of the proposed employment;
- * the reason why employment of the professional is necessary (i.e., why it would not be appropriate for the trustee or other applicant to perform the specified tasks);
- * how employment of the professional would benefit the estate; and
- * the projected cost of employing the professional.

In particular, it is important for the applicant to discuss the value of the assets the professional’s efforts are likely to render to the estate. This may require a brief discussion of the liquidity, size and complexity of the estate, so that the Court may determine whether the estate can bear the burden of employing the professional.

Requests which contain this type of information enable the Court to review and, if appropriate, grant applications to employ professionals expeditiously.

F. Requests to Adjourn or Change Hearing Dates

The Court wishes to accommodate counsels’ schedules as much as possible. If you need to adjourn a hearing date, or change a hearing date or time, contact the court’s staff *with the relevant parties on the line*, and the staff will make every effort to move the hearing to a date and time acceptable to all parties. If you call to adjourn a date without the relevant parties—including, if appropriate, the trustee—on the line, you will be asked to call back when you have those parties on the line.

G. Motions to Annul the Stay

In cases where a party not only asks that the stay be lifted, but that the Court annul the stay as to certain actions, the motion to lift the stay and annul should indicate when the moving party received notice that a bankruptcy petition had been filed.

H. Hearings on Motions to Lift the Automatic Stay

As most practitioners are aware, in cases where a party files an appropriate motion requesting relief from the automatic stay, the stay terminates as to that party thirty (30) days after the request, unless an objection is filed and the court, after notice and a hearing, orders the stay continued pending a final determination. The law permits “preliminary hearings,” “final hearings,” or both.

It is difficult for a party to file a motion to lift the stay, serve all affected parties, give all affected parties the fifteen (15) days required by the Eastern District's local rules to object, allow additional time for objections to be mailed, *and* have a hearing within thirty (30) days. For that reason, many courts schedule a "preliminary" hearing relatively quickly, knowing that matters are not likely to be resolved at that hearing, in order to have the ability to continue the stay in effect.

This process points out two issues. First, the Court will not issue an order continuing the stay past the thirty (30) days absent a request to do so. Debtors and their counsel may wish to note this fact.

Second, many lawyers ask to attend hearings on motions to lift the stay by telephone, rather than in person. Other judges in this district, and some judges in other districts, allow this practice.

This Court is very reluctant to hold telephone hearings on issues of any substance for a number of reasons. Included among these reasons is a practical one—the sound system the courts use does not allow the Court to be heard while parties are in the process of talking. Thus, the Court cannot interrupt to ask clarifying questions, cut off inappropriate or unnecessary arguments, or interject comments while counsel are speaking.

The Court realizes that attending hearings in person can be burdensome for counsel in cases where the hearing is likely to last a very short period of time. The Court has no wish to force attorneys—particularly those who would have to travel some distance—to appear on matters which, for the most part, have been or are on the verge of being resolved. Neither does the Court wish to spend docket time (which is often limited, particularly on the days when the Court hears Chapter 13 matters) on issues for which the Court can provide no assistance.

The Court is much more willing to allow a party or parties to appear by telephone for hearings on motions to lift the stay if the parties have spoken with each other ahead of time and ascertained that the matter cannot be resolved. To encourage parties to consider resolution prior to the scheduled hearing date, the following policy governs request to appear by telephone for motions to lift the stay:

- * *All notices of hearings on motions to lift the stay will indicate that the hearings are to take place in person.*
- * *If a party calls and requests permission to attend such a hearing by telephone, court staff still will ask whether the party has attempted to resolve the matter with opposing counsel.*
- * *If the party requesting permission to appear by telephone has made no effort to speak with opposing counsel, the Court will be less likely (if likely at all) to allow a telephone appearance.*
- * *Parties will be much more likely to obtain permission to appear by telephone if attempts to resolve the matter have been made but have failed, or if the matter has been resolved and simply needs approval by the Court.*

- * *If efforts have been made to contact opposing counsel to discuss resolution, but the party has been unable to reach opposing counsel on successive occasions, or has left messages that have not yielded return calls, the party should notify court staff of this fact.*
- * *If the Court grants permission to appear by telephone because the matter has been settled or because efforts to achieve settlement have been unsuccessful, that permission will be granted as to all parties as to that case only. Counsel requesting the permission to appear by telephone is responsible for letting other parties know that the hearing will be conducted by telephone.*

See the general rules governing telephonic appearances in Section J below for further details on telephone hearings.

I. Pre-trials in Adversary Proceedings–Telephone Conferences

The Court will, as a matter of routine, hold pretrial conferences in adversary proceedings by telephone. Notices of hearing for such pre-trials will indicate that the parties are to appear by telephone. See the general rules governing telephone appearances in Section J below for further details on telephone hearings.

J. Other Hearings–Telephone Conferences

As with motions to lift the stay, the Court presumes that the parties—including counsel—will appear in person in court, unless the notice of hearing specifically says otherwise. And just as with motions to lift the stay, the Court **strongly** encourages parties seeking other relief to review Local Rule 9014.3, which requires parties to talk to each other before any scheduled hearing and to try to resolve disagreements if at all possible. *If an attorney requests a teleconference, but has not made reasonable efforts to discuss the matter with the client and opposing counsel, the Court is likely to require the attorney to appear.*

Some general rules regarding telephone appearances:

1. Local Rule 9014.4 provides that any party may ask to have a *preliminary* hearing—that is, a hearing that does not require presentation of evidence—conducted by teleconference. (A teleconference means that all parties appear by telephone.)

The Court is more likely to allow parties to appear by teleconference under circumstances like the following:

- a. Situations in which the parties have discussed the matter prior to the hearing date, and either have reached agreement or concluded that they need to request a date for an evidentiary hearing;
- b. Situations in which the hearing is likely to be brief (10 minutes or less) and one or more parties must travel more than 30 miles to appear;

- c. Situations in which no objection has been filed, but the Court has questions; and
 - d. Situations in which the parties are asking for an adjourned date for a hearing.
- 2. The Court will consider requests for teleconferences on a case-by-case basis.
- 3. Except in extraordinary circumstances, the Court will not allow parties to appear by telephone in proceedings where a lawyer or *pro se* party will be examining witnesses, or where the lawyer represents a client who is appearing in person.
- 4. If the Court allows a teleconference, the parties must provide the Court with telephone numbers where they can be reached at the time of the scheduled hearing, and the Court will make every effort to contact the parties at the scheduled time. You should be aware, however, that the Court may not always be able to contact parties at the scheduled time, due to calendar delays.
- 5. Parties should be aware that, once the courtroom deputy indicates that she is transferring the call into the courtroom, the Court can hear the parties talking with each other.

VII. The Court's Web Site

As a final note, the Court encourages lawyers and *pro se* parties appearing in the bankruptcy courts for the Eastern District of Wisconsin to utilize the court web site, located at <http://www.wieb.uscourts.gov>. As discussed above, the local rules for bankruptcy practice in this district are located on the web site, as well as forms and other helpful information.

The calendars of the four bankruptcy courts in the Eastern District are posted on the web site. In addition, the judges of the Eastern District bankruptcy courts post on the web site decisions and orders which they believe involve issues of interest to the bankruptcy bar. Checking these decisions often will illuminate how the courts are treating various issues. This may be particularly helpful in cases filed on or after October 17, 2005, and therefore governed by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). The clerk's office also has compiled a number of BAPCPA resources on the web site, to assist lawyers and *pro se* parties in trying to understand the new law.